

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSE CARLOS DUARTE, *
Plaintiff *

V. *

CIVIL ACTION

NO. 1:05CV11725 JGD

PUB 106 INC. and *
DANA COLBY, *
Defendants *

MOTION TO SET ASIDE DEFAULT JUDGMENT

Now comes the Defendant, pursuant to F.R.C.P. Rule 55(c) Rule 60(b)(1)(3) and (6) and moves this Honorable Court to vacate the default judgment entered against the Defendants and to permit the Defendants to file an answer.

1. On August 26, 2005, a Summons and Complaint on the instant action was served on an unknown person and entity other than the Defendants. The Defendants were unaware of the filing and service of the Complaint and Summons and did not answer.

2. The Summons and Complaint were served at an address different than the Defendants' address and different from where the Plaintiff directed all prior correspondence with the Defendants.

3. A Notice of Default was issued on January 6, 2006 for failure to plead or otherwise defend. The notice was sent to the Defendant's address provided by the Plaintiff, which was different from the address of the corporation and different from the address where the Plaintiff directed all previous correspondence to the Defendant.

4. On March 30, 2006, a Motion for Default Judgment was filed. The Certificate of Service indicates service was directed to the same erroneous address.

5. Defendant became aware of the filing of the Complaint and the Default Judgment when he was served with an Order to Appear for the June 28, 2006 hearing by the Plaintiff. The Order to Appear was served on Mr. Colby at Pub 106, Inc., at 1300 Plymouth Street, East Bridgewater, Massachusetts and not at the address where the Complaint, Default and Motion for Default were served by the Plaintiff.

6. The Defendants were unaware of the service of the Complaint, the Default and Default Judgment that were served to 650 Plymouth Street, East Bridgewater, Massachusetts rather than at the location of the Defendant corporation at 1300 Plymouth Street, East Bridgewater, Massachusetts.

7. The Defendant has legitimate defenses to present to the Court if the Default Judgment is vacated and he is permitted to answer.

WHEREFORE, the Defendants move this Honorable Court to vacate the Default Judgment entered against the Defendants and permit the Defendants to file an Answer late. The attached Affidavit sets for the factual basis of this motion.

Respectfully submitted,
DANA COLBY and PUB 106, INC.
By their attorney,

/s/ Donald J. Kaiser

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Dated: July 20, 2006